IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7987 of 1991

with
SPECIAL CIVIL APPLICATION NO. 7988 OF 1991

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KARSANBHAI P PATEL AND ANOTHER
Versus
HIRABHAI MOHANBHAI KACHHIYA

Appearance:
MR AJ PATEL for Petitioners
MR JITENDRA M PATEL for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 27 /12/2000

CAV JUDGEMENT

1. These two petitions under Article 227 of the Constitution of India have been preferred against a

common order passed in two Revisions Nos. 1230 of 1991 and 131 of 1991 by the Gujarat Revenue Tribunal,wherby two separate orders in two separate cases dated 27.8.1990 of the Mamlatdar-cum-- Agricultural Lands Tribunal, Jhagadia, declaring the respondent as tenant of the land involved passed under section 70 (b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (`the Act' for short) have been maintained and the orders of the appellate authority, Rajpipla dated 21.1.1991 in the two cases taking a contrary view have been set aside,

2. In both tenancy cases Nos.12 and 13 of 1989, the respondent-tenant is common, although the lands involved and the landlords belonging to the same family are different.The case of the respondent-tenant before the Mamlatdar was that he is in continuous cultivating possession since the year 1973 of the two parcels of agricultural lands admeasuring 1 acre- 1 Guntha and 2 acres and 2 Gunthas in survey No.8l4 which he obtained from the landlords on sharing of crop half and half. The occasion to approach the Mamlatdar for declaration of his status as a tenant arose when, in the year 1979, the landlords, in assertion of their right, tried to take forcible possession of the land from him.

3. The Mamlatdar, Jhagadia in two separate cases Nos.12 and 13 of 1989,found the case of the tenant amply proved of his being in possession of the land as a tenant and declared his status and right of possession as such.

4. The Deputy Collector, Rajpipla, however, raised a doubt on the claim of the tenant of his being in personal cultivation since the tenant was employed as teacher. On the above ground and other ground of alleged fragmentation of holding, the appellate authority set aside the orders of the Mamlatdar-cum-ALT.

5. The respondent-tenant, then, approached the Gujarat Revenue Tribunal by way of revisions and the GRT set aside the orders of the appellate authority and upheld the decision of the Mamlatdar. That is how, the landlords in these two cases have approached this court invoking jurisdiction under Article 227 of the Constitution of India.

6. Learned senior counsel Mr.A.J.Patel for the petitioners assails the orders of the GRT and the Mamlatdar mainly on the ground that both the authorties completely ignored the legal effect of the agreement dated 11.4.1984 in relation to land area of 1` acre- 1 Guntha and other agreement dated 26.5.1979 in respect of

land admeasuring 2 Acres- 2 Gunthas . Relying on the aforesaid two agreements entered into between the landlords and tenant, the learned counsel for the petitioners contends that the tenant was `mortgagee in possession' and the landlords were mortgagors. Under the terms of the agreements, it was agreed that the amounts of money advanced were to be adjusted from the yield of the land of which cultivation was handed over to the tenant. Learned counsel relies on the provisions contained in section 4 (c) of the Act which read as under:

"4.A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not-

(a) x x x

(b) x x x

(c) a mortgagee in possession."

Admittedly, the two agreements on which reliance is placed and said to be documents showing transaction of mortgage, were compulsorily registrable under the provisions of the Registration Act. The same being unregistered cannot be received in evidence. Learned counsel for the landlords,however, submits that such unregistered mortgage deeds could be relied for `collateral purpose' or ascertaining the nature of possession of the tenant of the land. Reliance is placed on the decision of the Supreme court in the case of Bhaiya Ramanuj Pratap Deo vs. Lalu Maheshanuj , AIR 1981 SC 1937.

7. Mr. J.M.Patel, learned senior counsel appearing for the tenant in reply to the contentions advanced on behalf of the petitioners, submits that not only that the two agreements, said to be mortgage deeds and heavily relied upon, are unregistered and,therefore,inadmissible in evidence,but the agreements were not produced in original before the Mamlatdar.Their execution was also not proved by the landlords. On behalf of the tenant, learned counsel submits that such unproved so called mortgage deeds cannot be relied for the alleged `collateral purpose' of finding out the nature of

possession of the tenant. It is submitted that the tenant had led overwhelming evidence to the satisfaction of the authorities that he was throughout in cultivating possession of the land on the share in crop basis and,therefore, he was rightly declared to be tenant under the provisions of section 70 (b) of the Act.

8. The English translation of the two agreements written in Gujarati has been supplied to me. I have gone through the contents of the agreements.There is mention of advance of lump sum amount of Rs. 3,000/- by the tenant to the landlords with a right to the tenant to cultivate the land and adjust the amount towards money advanced. The landlords agreed to allow the tenant to remain in possession for three agriculture seasons Samvat years 2041 to 2043 and on expiry of the period, the tenant agreed to deliver back possession of the land. There is no specific mention in the recitals of agreements that the land was mortgaged to the tenant. The documents are captioned as `Agreements for exchange of crop in lieu of money'. They are not termed as mortgages.In these circumstances,prima facie, it is not possible for this court to come to the conclusion that the two agreements are documents of `mortgage' as defined under section 58 of the Transfer of Property Act.Learned counsel for the petitioners submits that the contents of the agreements show that it is a kind of `anomalous mortgage' as defined under clause (g) of section 58. I do not consider it necessary to interpret the two documents. Assuming that the two agreements are transactions of mortgage, the mortgage deeds having not been executed and proved in accordance with the provisions of the Transfer of Property Act and being unregistered, are inconsequential in law. Learned counsel for the petitioners made strenuous efforts to persuade me to rely on the two agreements for collateral purpose to ascertain the nature of possession of the tenant. The decision of the Supreme court in Bhaiya Ramanuj Pratap Deo (supra) on which reliance has been placed was concerning Khorposh (maintenance) deed which was held void ab initio only because no sanction of the Commissioner as contemplated by section 12A of the Chota Nagpur Encumbered Estates Act (6 of 1876) was obtained and the deed was neither stamped nor registered. The plaintiff, on the above basis, described the defendant as a trespasser and liable to be ejected as such. It is on the above facts that so called Khorposh Deed was read for collateral purpose by observing thus:

"In view of the legal position, the maintenance deed can be looked into for collateral purpose of ascertaining the nature of possession.

Admittedly, the defendant was a member of a joint Hindu family.Even in an impartible estate he was entitled to maintenance and the land in dispute had admittedly been given to the defendant by the impartible estate holder. His possession,therefore, cannot be taken to be the possession of a trespasser and the High Court in our opinion has erred in branding the defendant as a trespasser."

What is to be noted from the facts and observations made by the Supreme court above is that the document which was unregistered, unstamped and inadmissible in evidence viz.Khorposh Deed, was not allowed to be read as a deed for transaction involved in it. It was read for collateral purpose to ascertain whether the defendant could resist possession as a member of a Joint Hindu family entitled to maintenance from the land in dispute which was impartible estate. The effect of unregistered document which is compulsorily registrable as laid down in section 49 of the Registration Act, is that such document shall not `effect any immovable property comprised therein nor shall it be received as evidence of any transaction affecting such property'. The proviso to section 49 of the Registration Act, however, states that such unregistered document maybe received as evidence for a limited purpose in a suit based on specific performance under Chapter II of the Special Relief Act or as evidence of part performance of a contract for the purpose of section 53-A of the Transfer of Property Act or as evidence of any`collateral transaction' not required to be effected by registered instrument. The landlords relied on the `agreements' as deeds of mortgage and they prayed before the revenue courts as also now to this court to treat possession of the tenant as a `mortgagee in possession' within the meaning of section 4 (c) of the Act. The two agreements are thus being sought to be read as mortgage deeds and possession of the tenant as a mortgagee. This is the main purpose for which the documents have been relied upon. This purpose cannot be said to be collateral purpose within the meaning of the proviso to section 49 of the Registration Act. `Collateral purpose' must be independent or divisible from the same transaction for effecting which law requires registration. Collateral purpose is any purpose

other than by crating, declaring, assigning, limiting or distinguishing immovable property. Terms of mortgage deed cannot be read as constituting collateral purpose. Following observations of the Supreme court in the case of Satish Chand vs., Govardhadas,AIR 1984 SC 143 may be noted in this connection:

> "The unregistered draft lease agreement Exhibit B-2 was clearly inadmissible in evidence under section 49 of the Registration Act, except for the collateral purpose of proving the nature and character of possession of the defendants. The document Exh. B-2 was admissible under the proviso to section 49 only for a collateral purpose of showing the nature and character of possession of the defendants. The proviso to section 49 was however not applicable in the present case inasmuch as the terms of a lease are not a "collateral purpose" within its meaning.It follows that the unregistered draft lease agreement Exh. B-2 was inadmissible to prove the transaction of lease. It was also ineffectual to create a valid lease for a renewed term of nine years for want of registration as required under section 17 (1) (d) of the Registration Act."

9. Here, two agreements are not only unregistered but they are also not proved before the revenue authorities. The contents of the two agreements,therefore,cannot be allowed to be read in favour of the landlords in support of their case that possession of the tenant was throughout as a mortgagee.

For the aforesaid reasons, I find no error in the decisions of the Mamlatdar-cum-ALT and the Gujarat Revenue Tribunal . Consequently, both the petitions fail and are dismissed but in the facts and circumstances , without any order as to costs. Rule is discharged.

(D. M. Dharmadhikari,C.J.)

parekh